THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 11015 of 1996

18-11-2005

Between:

THE FOREST RANGE OFFICER
DAMMAPET , KHAMMAM DISTRICT

..... PETITIONER

AND

1 THE DISTRICT KHAMMAM
KHAMMAM. And others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 11015 of 1996

O R D E R:

This petition is filed questioning the order of the District Judge (1st respondent) in F.A.No. 7/90 setting aside the order of confiscation of the vehicle belonging to the

3rd respondent, passed by the Sub Divisional Forest Officer, 2nd respondent.

Various grounds are urged by the learned Government Pleader assailing the maintainability of the order impugned in this petition.

On the ground that the driver of the vehicle bearing No. AHK 9888 belonging to the 3rd respondent was carrying forest produce in the car, the contraband and the car were seized and a notice was given to the petitioner to show cause why the car belonging to him, used in transport of the forest produce, cannot be confiscated. He gave his explanation. In his order dated 20-10-1990, 2nd respondent clearly stated that "discrete enquiries made at Devarapalli, place where car owner hails from, by the authorized officer revealed that driver Sri Kodi Surya Rao and newly acquired owner of car Sri Peravali Radhakrishna had a tussle recently. The driver availed the opportunity to harass the car owner by willfully took the car towards Vinayakapuram. The knowledge of owner is beyond the scope of the present case. At the time of offence, owner was about 50 kms away from the scene of offence. But the owner cannot shrik the responsibility ass he is having vicarious liability upon the action of his agent."

From the order of the 2nd respondent, which was set aside by the 1st respondent, it is clear that the 3rd respondent, who is the owner of the seized car, is not in connivance with the driver, who was found smuggling the forest produce. As per Section 44(2)(c) of A.P. Forest Act the vehicle used in transport of the contraband cannot be seized if the transport is being made without his knowledge or connivance of the owner and if he has taken on reasonable and necessary precautions against the use of the car.

It is no doubt true that the burden of proof to establish lack of knowledge etc., is on the owner of the vehicle. But onus of proof pales into insignificance when the facts are admitted by the prosecution. Since the order of the 2nd respondent itself shows that the driver of the 3rd respondent and the 3rd respondent are at loggerheads, and that the driver of the 3rd respondent, with a view to spite 3rd respondent, took away the car and indulged in transport of forest produce, there cannot be any connivance between the 3rd respondent and the driver. For the acts of such a driver, the owner cannot be punished. It is well known that the theory of vicarious liability does not extend to criminal acts and so for the criminal acts committed by the driver without

the knowledge of the owner, owner cannot be punished.

In view thereof, 1st respondent setting aside the order of confiscation of the car of 3rd respondent passed by the 2nd respondent needs no interference.

Since the other points raised by the learned Government Pleader are only of academic interest and will have no bearing on final decision reached by the 1st respondent. I do not feel it necessary to advert the other contentions raised by the learned Government Pleader.

For the above reasons, I find no merits in this petition and hence the petition is dismissed. No costs.

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18-11-2005

Mjl/*